



Town Council Agenda Report

SUBJECT: Resolution

CONTACT PERSON/NUMBER: Gail Reinfeld, 954-797-1020

TITLE OF AGENDA ITEM: A resolution of the Town of Davie, Florida, clarifying Resolution R-95-115 regarding the administration of pre-employment drug screenings as part of the hiring process for the Town of Davie.

REPORT IN BRIEF: The City of Hollywood's pre-employment policy was challenged by an applicant who refused to submit to a pre-employment drug test for an accounting position and, as a result, was not hired by the City. Judge Kenneth Ryskamp, of the United States District Court for the Southern District of Florida, issued an opinion on April 4, 2000, that the City of Hollywood's across-the-board pre-employment drug testing policy constituted an unreasonable search under the Fourth and Fourteenth Amendments to the United States Constitution because the City could not demonstrate a clear and direct nexus between the nature of the employee's duty and the nature of the feared violation. This decision limits pre-employment drug testing to safety-sensitive positions and to those where there are "special needs" identifying a connection between the job sought and the drug testing.

Town staff has reviewed its pre-employment drug screening policy and wishes to clarify that pre-employment drug screening will be administered to candidates for employment after a conditional offer of employment has been given for safety-sensitive positions and those where there are special needs; such as, in which a risk to public safety is substantial and real or where public safety is in jeopardy. Pre-employment drug screening will be administered for positions that include, but are not limited to: Firefighter, Police Officer, Police Service Aide, Police Service Aide - Special Assignment, Activities Leader, Program Supervisor, Counselor, Junior Counselor, Pool Lifeguard, Recreation Leader, Facility Manager, Head Lifeguard, Recreation Supervisor, Parks and Recreation Athletics Supervisor, and positions requiring employees to submit to D.O.T. random testing, such as Construction Technician, Maintenance Technician I, Maintenance Technician II, Maintenance Technician III, Equipment Operator, Lift Station Operator, Lift Station Trainee, Plant Operator Trainee, Plant Operator I, Plant Operator II, Utility Field Technician Trainee, Utility Field Technician I, Utility Field Technician II, Utilities Maintenance Mechanic, Utilities Maintenance Technician, and Utilities Maintenance Supervisor.

PREVIOUS ACTIONS: Resolution R-95-115 was adopted on November 3, 1995

CONCURRENCES: not applicable

FISCAL IMPACT: not applicable

RECOMMENDATION(S): Motion to approve

Attachment(s): Resolution, Newsletter

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, CLARIFYING RESOLUTION R-95-115 REGARDING THE ADMINISTRATION OF PRE-EMPLOYMENT DRUG SCREENINGS AS PART OF THE HIRING PROCESS FOR THE TOWN OF DAVIE.

WHEREAS, Judge Kenneth Ryskamp of the United States District Court for the Southern District of Florida issued an opinion on April 4, 2000, that the City of Hollywood's pre-employment drug testing policy constituted an unreasonable search under the Fourth and Fourteenth Amendments to the United States Constitution because the City failed to demonstrate a "special need" for the across-the-board pre-employment drug screening; and

WHEREAS, Rule V, Section 3, of the Town of Davie Personnel Rules and Regulations, provides that each applicant for employment shall submit to examinations as deemed appropriate by the Town Administrator or appointing authority to determine the fitness of the applicant; and

WHEREAS, Town Council adopted Resolution R-95-115 which authorized pre-employment drug screening as part of the hiring process for all positions in the Town of Davie; and

WHEREAS, the Town has subsequently reviewed its policy of administering pre-employment drug screening for all positions; and

WHEREAS, the Town wishes to clarify that pre-employment drug screening will be administered to candidates for employment after a conditional offer of employment has been given for safety-sensitive positions and those where there are special needs; such as, in which a risk to public safety is substantial and real or where public safety is in jeopardy; and

WHEREAS, it is in the best interest of the Town to immediately clarify its policy of pre-employment drug screening.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town of Davie clarifies that pre-employment drug screening will be administered to candidates for employment after a conditional offer of employment has been given for safety-sensitive positions and those where there is special needs; such as, in which a risk to public safety is substantial and real or where public safety is in jeopardy.

SECTION 2. This resolution will take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2000.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

LAW OFFICES

MULLER, MINTZ,

KORNREICH,

CALDWELL, CASEY,

CROSLAND &

BRANNICK, P.A.

Labor & Employment Law

NEWSLETTER

Developments in Labor and Employment Discrimination Law

A Service For Our Clients & Friends

IMPORTANT NEWSLETTER UPDATE FOR OUR PUBLIC SECTOR CLIENTS

FLORIDA COURT STRIKES DOWN ACROSS-THE-BOARD PRE-EMPLOYMENT TESTING. The United States District Court for the Southern District of Florida has struck down the City of Hollywood's pre-employment drug testing policy. In an opinion issued on April 4, 2000, Judge Kenneth Ryskamp held that the City of Hollywood's pre-employment drug testing policy constituted an unreasonable search under the Fourth and Fourteenth Amendments to the United States Constitution because the City failed to demonstrate a "special need" for the across-the-board pre-employment drug screening.

Under the City's policy, all candidates for all full and part-time positions were required to undergo a drug test after a conditional offer of employment. Any person who refused such a test, or failed, would not be employed by the City. The City's pre-employment drug testing policy was challenged by an applicant for an accounting position who refused to submit to a pre-employment drug test, and as a result, was not hired for the accounting position by the City.

The issue as framed by the Court was "whether the City has articulated a 'special need' justifying its suspicionless drug testing of all new applicants as a condition of employment." Judge Ryskamp relied

upon the reasoning in the United States Supreme Court case of *Chandler v. Miller*, 520 U.S. 305, 117 S. Ct. 1295 (1997), wherein the Court held that suspicionless drug testing was only considered reasonable where the "risk to public safety is substantial and real," or where "public safety is genuinely in jeopardy." *Id.* at 323. The *Chandler* Court struck down a Georgia state statute requiring all Georgia candidates running for high office to submit to and pass a drug test. Judge Ryskamp further opined that the governmental entity bears the burden of demonstrating a clear and direct nexus between the nature of the employee's duty and the nature of the feared violation. According to Judge Ryskamp, the City's desire to promote "public integrity" did not satisfy the City's burden.

Basically, Judge Ryskamp's decision limits pre-employment drug testing to safety-sensitive positions and to those where there are "special needs" identifying a connection between the job sought and the drug testing. This means that policies requiring pre-employment drug testing for all prospective employees, regardless of position, are now in question, and should be re-examined. Public employers should evaluate their reasons for testing applicants seeking clerical, computer-related, accounting, budget, and similar non-safety

sensitive positions. Absent safety-related or other special needs, employers may not be able to drug test these applicants as a condition of employment.

It would appear from Judge Ryskamp's decision that police officers, firefighters, nurses, police and fire dispatchers, teachers, those who operate heavy equipment such as utilities workers, and those that work directly with children can still be tested prior to employment. Also, this ruling does not appear

to affect the federal Department of Transportation rules and regulations which mandate drug testing of those operating certain types of motor vehicles.

Although Judge Ryskamp's decision is not necessarily binding upon other district court judges, it is certainly persuasive authority and one that warrants serious consideration.